

October 1, 2015

Hon. Kevin N. Fox
United States Magistrate Judge
Southern District of New York
United States Courthouse Rm 228
40 Foley Square
New York, NY 10007

Re: Case No. 15-CV-00495 "Modesto Vs. Figueroa, et. al."

Dear Judge Fox,

I am the pro se plaintiff in the above case.



I filed this letter to oppose the motion for extension of time to file reply filed by Atty. David Ward, counsel for individual defendants Securitas employees (Securitas for brevity).

Kindly note that Atty. Ward has repeatedly moved for the cancellation on two (2) occasions of the mediation proceedings which have granted in error despite my opposition. Atty. Ward it is believed, may have deceived the mediator into believing that no opposition was filed on his requests, because the plaintiff timely filed emails in this regard. Please see attached emails addressed to my mediation Atty. David White and mediator Eric Dranoff. The other defendants have not asked for cancellation, but only Atty. Ward in behalf of Securitas, without prejudice to plaintiff's pursuit of remedies to declare Securitas in default. Plaintiff filed a previous letter addressed to the Court and will shortly inform this Court of his further moves.

I am grateful that your Honor denied Atty. Ward's persistent requests addressed to the Court and the mediator, to stay, cancel or reschedule the mediation without basis.

It is advised that even in the EEOC where this case originated, defendant Securitas has avoided efforts of the EEOC Investigator to mediate between plaintiff and Securitas.

Plaintiff believes that the numerous attempts of Atty. Ward to frivolously delay this case is now evident before the Court. Plaintiff urges the Court that its

judgment be not swayed by the careless statements of opposing counsel that plaintiff has filed duplicative complaints. As can be gleaned from the attached emails, and the motion for reconsideration in the previous case of Securitas handled by plaintiff's former counsel Felix Vinluan, it is that counsel's fault that 2 cases have been filed. Atty. Vinluan's suspicious possible misconduct in encouraging plaintiff to make a mistake, is now under scrutiny. Plaintiff therefore should not, in any way be blamed by the filing of those cases since he believes he may have been a victim of negligent and unfaithful legal representation.

Plaintiff requests the Honorable Court to deny the Motion for extension of time to file reply filed by defendant Securitas through Atty. Ward, in order not to delay this case further either through litigation under this Court, or mediation under the mandatory rules of the Southern District of New York.

Plaintiff also reserves the right to pursue further legal action in his pursuit of remedy to declare defendant in default for failure to file a motion to dismiss on time under Rule 66 of the Federal Rules of Civil Procedure.

Thank you.

Respectfully,

att. a/s


Ramon Modesto
Plaintiff

Cc: David Ward
Kluger Healy, LLC
Attorneys at Law
Counsel for defendant Securitas
23 Vreeland Road, Suite 220
Florham Park, NJ 07932

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Recent



Confidential, Ex Parte Correspondence: Modesto v. Figueroa, et al. 1:15-cv-049 Important

David M White <david.white@shu.edu> Jul 20 at 7:32 AM

To: Eric Dranoff (edranoff@skdlp.com) 'monmodesto@yahoo.com'

Mediator Dranoff and Mr. Modesto:

Good morning. I write in confidence to review recent developments in the mediation of the above-captioned civil action.

On Friday, 7/17/15 at 3:28pm, defense counsel David Ward emailed Mediator Dranoff regarding Mr. Ward's concern that mediation would be inappropriate at this time because some defendants have not participated in the process to date. Mr. Ward believes that the Court will dismiss certain defendants from the case, further frustrating the utility of this process.

As Plaintiff Modesto and Mediator Dranoff are aware, the Seton Hall University School of Law Conflict Management Program ("Seton Hall") represents Mr. Modesto for the limited purpose of mediation. We play no part in any litigation event.

From Seton Hall's perspective, the decision to proceed or to stay (temporarily adjourn) the mediation process largely rests with Mr. Modesto. We remain prepared to zealously represent Mr. Modesto on Friday, 7/24/15 at 10:00am as scheduled.

By "reply all" to this confidential correspondence, I invite Mr. Modesto to express his views to Mediator Dranoff.

Thank you for your consideration of this time-sensitive matter.

Very truly yours,
DMW

Prof. David Michael White
Director, Conflict Management Program
Director, Investor Advocacy Project
Seton Hall University School of Law
One Newark Center, Room 429
Newark, New Jersey 07102
973.642.8084 (Direct Dial)
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david.white@shu.edu
http://law.shu.edu/Faculty/fulltime_faculty/David-White.cfm

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Recent

Modesto v. Figueroa, et al. 1:15-cv-0495 (RA) Important

David M White <david.white@shu.edu>
To: 'monmodesto@yahoo.com'

Jul 24 at 2:48 PM

Mr. Modesto:

Good afternoon. Per our text exchange of earlier today, this email serves to confirm that mediation of the above-captioned civil action will take place on Friday, 9/25/15 beginning at 10:00am. The location will be the Offices of Saretsky, Katz & Dranoff, 475 Park Avenue South, New York, NY.

Best regards,
DMW

Prof. David Michael White
Director, Conflict Management Program
Director, Investor Advocacy Project
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One Newark Center, Room 429
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PERSONAL

Subject: RE: Modesto v. Figueroa et al - 15-cv-00495

Mr. Ward:

Thank you. Seton Hall plays no role in litigation events, e.g., a stay of mediation. We therefore take no position regarding an adjournment *sine die*. We properly leave that decision to Mr. Modesto.

Please email a copy of your filed letter application, as Seton Hall does not have an ECF account and will therefore not receive the "bounce."

Upon receipt, I will consult with Mr. Modesto.

Best regards,
DMW

Prof. David Michael White
Director, Conflict Management Program
Director, Investor Advocacy Project
Seton Hall University School of Law
One Newark Center, Room 429
Newark, New Jersey 07102
973.642.8084 [Direct Dial]
973.642.8064 [Facsimile]
david.white@shu.edu

From: David Ward [mailto:dward@KLUGERHEALEY.COM]

Sent: Thursday, September 10, 2015 4:59 PM

To: 'monmodesto@yahoo.com' <monmodesto@yahoo.com>; 'Singer, Andrew W.' <Singer@thsh.com>; 'Ingrid Nava' <INava@seiu32bj.org>; 'Klimpl, Jason' <Klimpl@thsh.com>

Cc: Eric Dranoff <edranoff@skdllp.com>; David M White <david.white@shu.edu>

Subject: RE: Modesto v. Figueroa et al - 15-cv-00495

Mr. Modesto and Counsel:

With the motions to dismiss pending I do not believe a session will be productive at this juncture. Mr. Modesto has sued the individual employee/co-workers at Securitas, his suit against Securitas is dismissed, and he asserts that the individuals are in default. Under these circumstances I do not see how mediation can proceed. Securitas is not a party and therefore will not be appearing and the individual employees should not even be in this case. I do not have an objection to proceeding with a mediation conference to address the issues generally, but I do not think it will be productive for anyone to attend a mediation when all of these outstanding issues remain, including whether Mr. Modesto intends to add Securitas as a defendant by amending his pleadings.

I intend to make a letter application to the Court to request that the mediation be stayed pending a

decisions on the motions to dismiss. Kindly advise of your position.

Also, even if the mediation proceeds I have discussed scheduling issues with mediation counsel for Mr. Modesto. The September 25, 2015 date does not seem workable given conflicts. Accordingly, in my letter application I intend to request that in the event that the Court refuses to stay mediation, that the mediation date be rescheduled to a Friday in November, preferably November 20th or alternatively November 7th. Kindly advise me of your position in this regard as well.

Thank you,

David Ward
Kluger Healey, LLC
788 Shrewsbury Ave., Suite 2182
Tinton Falls, New Jersey 07724
732-852-7500
(fax) 888-635-1653

From: Eric Dranoff [<mailto:edranoff@skdllp.com>]

Sent: Friday, July 24, 2015 10:12 AM

To: 'monmodesto@yahoo.com' <monmodesto@yahoo.com>; David Ward <dward@KLUGERHEALEY.COM>; 'Singer, Andrew W.' <Singer@thsh.com>; 'David M White' <david.white@shu.edu>; 'MediationOffice@nysd.uscourts.gov' <MediationOffice@nysd.uscourts.gov>; 'Ingrid Nava' <INava@seiu32bj.org>; 'Klimpl, Jason' <Klimpl@thsh.com>

Subject: Modesto v. Figueroa et al - 15-cv-00495

Good morning all:

This is to confirm that the mediation is rescheduled to September 25, 2015 at 10:00 a.m. It will take place at my office. Please make sure that you each have a representative from each of your clients in attendance. Thank you for your cooperation.

Eric Dranoff, Esq.
Saretsky Katz & Dranoff, LLP
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New York, New York 10016
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www.skdllp.com

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Subject: Re: Modesto v. Figueroa et al - 15-cv-00495
From: ramon modesto (monmodesto@yahoo.com)
To: david.white@shu.edu;
Date: Wednesday, September 16, 2015 3:01 PM

Dear Prof. White,

Thank you for your email. First of all, I commend the efforts of Mr. Noel Thomas in that meeting in the office of Atty. Serrins. He was very good and methodical.

I agree with your statement to Atty. Ward that Seton Hall plays no role in a stay of mediation. In asking for A SECOND UNWARRANTED STAY OF MEDIATION, Atty. Ward is effectively asking for a stay from July to November 2015, or almost 6 long months from its original date of July 25, 2015. Please note several points below which I emphasize to resist and object to this dilatory stay of mediation.

1. Of all the defendants and their respective counsel, it is only Atty. Ward who has asked for a stay not once, but twice. On the day of the telephone conference, he is wittingly or unwittingly absent and comes up with a lame excuse that his daughter fell down the stairs. Whether or not this excuse was true or intentionally misleading or whether he lied to the Mediator and to everybody else, it would not have made a difference on the alleged safety and emergency of his daughter if he stayed on the phone with the group for the teleconference which lasted for only about 5 minutes. Without being sarcastic, I believe that Atty. Ward is a lawyer and not a medical doctor unless he is.

2. In yet another attempt to foil the mediation, Atty. ward comes up with another ruse, difficult to understand, that he mistakenly thought that the present case for mediation was another case, Modesto vs, Securitas under Judge Richard Sullivan, which case was already dismissed long before the instant case was first set for mediation in July 25, 2015.. How he could have mistaken one for the other, two cases with different captions, in different courts and with different case statuses is elementary for a lawyer of his name.

3. In another deceptive move, Atty. Ward seeks to stay this mediation without divulging to the mediator and the parties therein that I have filed a letter to Judge Fox for the Securitas defendants to be declared in default. doc. 64, dated Aug. 14, 2015 of the docket. Defendant Securitas filed its Motion to Dismiss way beyond the period fixed by law. Even if denied by Judge Fox I intend to pursue other legal remedies to sustain my view that defendant Securitas is in default. The point is that I believe that Defendant Securitas and Atty. Ward have less of a right to repeatedly ask for a stay of mediation once the Judge grants my motion to declare them in default because Defendant Securitas would finally be excluded from the proceedings.

4. Atty. Ward unfairly harps on the two cases I filed in the SDNY which were dismissed. He attempts to fault me with this events, but the truth of the matter is that I was a victim of negligent legal representation and other people acting

with him. Without attributing fault to anyone at this point, the actions of my atty. in those 2 cases which he knew and was responsible for made that lawyer's actions subject of inquiry.

Atty. Ward has several times attempted to unfairly portray me as a person who has used and abused the legal system. This is patently untrue.

It was my former lawyer, i believe who orchestrated the dismissal of my two cases because he knew that it was duplicative at the onset. He

did not even file a motion to consolidate the second case with the present case which he should have done upon my repeated requests.

5. Atty. Ward has also come up with a lame excuse that I will still amend my complaint, which scenario he has deceitfully crafted to justify that mediation should be stayed. If what he said was true and not for purposes of misrepresentation, I would have amended my complaint in the earliest possible time with proper notice to the Court. But this I have not done nor intend to do.

6. Atty. Ward to the prejudice of Plaintiff his Mediation lawyers at Seton Hall and the other defendants, not only violated the SDNY rules on referral to automatic mediation in cases of this nature, but has also defied the order of Judge Abrams referring this case to mediation.

7. In the efforts of Seton Hall in painstakingly drafting a Mediation Statement and carefully preparing for the mediation, Atty. Ward, in obvious example of tyranny of the minority, has sought to render the efforts of Seton Hall nugatory and nullify their legally-mandated duty to represent their clients to the best of their ability. I believe that Atty. Ward's intent is to ultimately frustrate the ends of justice and deprive plaintiff of his day in Court..

In view of all of the foregoing, I believe that Atty. Ward and defendant Securitas requests are solely for purposes of delay. Kindly convey my sentiments to the mediator that I object to the cancellation of mediation on the efforts defendant Securitas and counsel Atty. Ward. If the mediator allows, the other parties can proceed with mediation on September 25, 2015 noting that defendant Atty. Ward and Securitas has unreasonably refused to participate.

Please inform me of new developments in this case, if any.

Thank you.

Respectfully,

Ramon Modesto

From: David M White <david.white@shu.edu>
To: 'David Ward' <dward@KLUGERHEALEY.COM>; "'monmodesto@yahoo.com'" <monmodesto@yahoo.com>; "'Singer, Andrew W.'" <Singer@thsh.com>; 'Ingrid Nava' <INava@seiu32bj.org>; "'Klimpl, Jason'" <Klimpl@thsh.com>
Cc: Eric Dranoff <edranoff@skdllp.com>
Sent: Thursday, September 10, 2015 5:36 PM



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September 16, 2015

Hon. Kevin M. Fox, USMJ
United States District Court
Southern District of New York
Thurgood Marshall
United States Courthouse, Room 228
40 Foley Square
New York, NY 10007

Re: Modesto v. Figueroa, et al.
Civil Action No: 15-cv-495

Your Honor:

We represent the individual defendants Bill Dunn, James Griffin, Frank Anello, Eddie Maldonado, Brenda Johnson, and Gloria Ran in the above matter. We make this letter application to stay the September 25, 2015 mediation scheduled in this matter or, in the alternative, to adjourn that session for the reasons set forth below.

Each individual defendant listed above is an employee of and is being sued for alleged violations of Title VII of the Civil Right Act of 1964 42 U.S.C. §§2000e, et seq., ("Title VII"), and the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621-634 ("the ADEA"). Plaintiff's allegations against each of these Defendants are based upon their actions or inactions during the course of their employment with non-party, Securitas Security Services, USA, Inc. ("Securitas").

A mediation session, pursuant to the SDNY mediation program, is currently scheduled for September 25, 2015. All parties who have been served with the Summons and Complaint have filed motions to dismiss, primarily upon the same grounds – namely, well established Second Circuit case law holding that individuals cannot be held personally liable for violations of Title VII and/or the ADEA.

We have written to the mediator and to mediation counsel for Mr. Modesto and to all other counsel, advising that with the motions to dismiss pending, we do not believe a mediation session will be productive at this juncture. Mr. Modesto has sued the individual employee/co-workers at Securitas. He has previously brought suit against Securitas, but that suit has been dismissed (see 15cv829, USDC, SDNY). Moreover, on September 9, 2015, Mr. Modesto has filed another action (15cv7157, USDC, SDNY)(his fourth in this Court based upon the same factual background), alleging Title VII

Hon. Kevin M. Fox, USMJ
September 16, 2015
Page 2



and employment claims against Securitas and other individual Securitas employees. We just received a copy of that complaint yesterday, September 15, 2015.

Under these circumstances, we do not see how mediation can proceed. Securitas is not a party in the instant matter, and therefore will not be appearing at mediation. The claims against the individual employees will be dismissed based upon well-settled Second Circuit law. And Mr. Modesto has filed another action which will likely require consolidation of that action with this matter, and the joinder of Securitas and additional employee defendants in this action.

We have written to the mediator and all parties advising of our intent to ask that the mediation be stayed until the motions to dismiss have been decided. We have received no objection from the mediator and no response from the other parties. In light of the Modesto recent filing of another employment complaint against many of the same parties to this action, and/or their employers, raising the same causes of action, we reiterate our position that a mediation session would not be productive at this juncture and request that the session be stayed.

Alternatively, if the Court is not inclined to stay the mediation, we respectfully request an adjournment of the September 25, 2015 date. We have conferred with mediation counsel for Mr. Modesto, who has advised that he has a conflict on September 25th, and I as well have a conflict on that date. The mediator has no opposition to the adjournment, and no other party has voiced any opposition. Accordingly, in the event that the Court refuses to stay mediation, I request that the mediation date be rescheduled to November 20, 2015. There has been no prior request for an adjournment.

Respectfully,

/s/ David A. Ward
David A. Ward